

## REMARKS

Favorable reconsideration of the subject application is respectfully requested in view of the following remarks. Claims 1 and 3-25 are pending, claim 20 is allowed, and claims 21-25 are currently under consideration.

### Allowed Claims

Applicants thank the Examiner for allowing claim 20.

### Rejection Under 35 U.S.C. § 102(a)

Claims 21-25 stand rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Brinkmann *et al.* More specifically, the Action alleges that Brinkmann *et al.* discloses a polypeptide having 98% identity with the polypeptide sequence of SEQ ID NO:809 and containing a stretch of 96 contiguous amino acid residues in common with the polypeptide sequence of SEQ ID NO:809. The Action further provides an amino acid sequence alignment of SEQ ID NO:809 with an unidentified sequence, which Applicants believe corresponds to a partial amino acid sequence of XAGE-1.

Applicants respectfully traverse this basis of rejection and submit that Brinkmann *et al.* fails to anticipate the instant claims, since the Action has not demonstrated that Brinkmann *et al.* disclose a polypeptide having at least 90% identity with the amino acid sequence of SEQ ID NO:809 or having at least 10 consecutive amino acid residues in common with the amino acid sequence of SEQ ID NO:809. While Brinkmann *et al.* describes the identification of ESTs for numerous genes of the GAGE/PAGE family and provides predicted partial amino acid sequences for several identified genes, Brinkmann *et al.* does not provide any amino acid sequence of XAGE-1. Indeed, Brinkmann *et al.* indicates that two subclusters of XAGE-1 ESTs were identified; the first subcluster did not contain an open reading frame, and the second subcluster contained two open reading frames, the second of which had homology to GAGE proteins but did not contain an initiator methionine until halfway into the composite sequence. Based upon these findings, Brinkmann *et al.* concluded that the amino acid sequence of XAGE-1 could not be determined and explicitly stated, "[b]ecause of the uncertainty with translation, this gene was omitted from Fig 3 [alignment of the deduced amino acid sequences of XAGE-2 and XAGE-3

with a typical GAGE gene]" (page 1447, column 2, lines 16-18). Accordingly, Applicants submit that Brinkmann *et al.* fails to describe the claimed polypeptides and, therefore, does not anticipate claims 21-25.

Regarding the amino acid sequence alignment results provided with the Action, Applicants submit that the Action provides no indication of the source or publication date of the sequence allegedly exhibiting homology to SEQ ID NO:809. Accordingly, Applicants submit that the Action fails to demonstrate that the comparison sequence qualifies as prior art under 35 U.S.C. § 102(a) and, thus, fails to establish a *prima facie* case of anticipation of claims 21-25.

In light of these remarks, Applicants respectfully request that this basis or rejection be reconsidered and withdrawn.

The Commissioner is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Applicants respectfully submit that all claims remaining in the application are now allowable. Favorable consideration and a Notice of Allowance are earnestly solicited. Applicants' attorney wishes to express her willingness to engage in a telephone interview to further the status of this application if any further concerns need to be addressed.

Respectfully submitted,

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